UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA, :

Plaintiff, : Criminal Action No. 1:18-cr-10154-DPW-1

v. :

FRANCIS M. REYNOLDS also known as "Frank Reynolds", :

Defendant. :

- x

BEFORE THE HONORABLE DOUGLAS P. WOODLOCK, DISTRICT JUDGE

SENTENCING

Thursday, February 13, 2020
2:36 p.m.

John J. Moakley United States Courthouse
Courtroom No. 10
One Courthouse Way
Boston, Massachusetts

Rachel M. Lopez, CRR
Official Court Reporter
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P R O C E E D I N G S

(In open court.)

THE DEPUTY CLERK: Criminal trial action number 18-10154, United States vs. Francis Reynolds.

THE COURT: Well, I have a number of issues to take up, and I'd like to kind of going to carve through them, if I can.

First, I'm going to be denying the motions for judgment of acquittal or in the alternative for a new trial. It's plain to me that a reasonable juror, jury, under the directions that they received from me and the evidence in this case, could fairly have found the defendant guilty of the charges in which he was found guilty.

The wrinkles that have been offered seem to me to be not particularly compelling wrinkles, beyond the idea of whether or not there's sufficient evidence. One aspect of that is some suggestion of variance. It doesn't apply here. What was involved here was a narrowing of the issues, to some degree at my instance. But everything for which the defendant was found guilty was fairly comprehended within the indictment. It was not distorted, not changed.

The evidence was similarly calibrated because of the somewhat colorful way in which the defendant chose to present himself, and it became necessary to do some carving of the Government's case. Otherwise admissible evidence was

excluded, or the Government was directed not to pursue it, just simply to avoid the danger of prejudice, self-inflicted, to the defendant himself during the course of the trial.

There is a -- kind of a hangnail of suggested discovery abuse. I'm not sure that it rose to the level of abuse. It is the disclosure of matters, well before trial, that occurs in a case with lots and lots of paper, in which the defendant had an adequate opportunity to pursue it. And I gave him additional benefit for that.

In short, there's nothing in that aspect of the motion for new trial or for judgment of acquittal that is supportable. So for all those reasons, I deny that motion.

Now, in terms of order, I understand that there are at least two or three persons who are alleged to be victims who wish to speak orally in court. And I think probably the best thing is to do that at the outset. The reason that I say that is, number one, we may run a bit longer than this afternoon. It depends. Number two, what they have to say is something that may or may not inform my judgment about questions of loss or gain or how we characterize that.

So Ms. Bloom, are you familiar with who wishes to speak and under what circumstances?

MS. BLOOM: I believe so, Your Honor. At this point, I believe there are two victims who wish to speak.

THE COURT: Okay.

MS. BLOOM: Shall I have them come up?

THE COURT: Yes. And if they feel comfortable, probably the easiest thing is to use the podium over there.

And if you can identify yourself, sir, by name.

MR. DOHERTY: My name is Chris Doherty.

THE COURT: Okay.

THE VICTIM: I want to thank the Court for giving me the opportunity to tell my story. Thank you, Judge, and thank you, Kathleen.

I am representing myself, my children, my eleven brothers and sisters, and my deceased parents. I met Frank Reynolds through my brother, Kevin. I had developed a home health monitor for chronic disease patients. I sold the technology and joined a company where we received FDA clearance for the electronic house-call device in 2009. Kevin told me about Frank's paralysis story and how Frank was working to cure paralysis with InVivo Therapeutics, where he was the CEO.

We visited him at his apartment one weekend in Medford, where I demonstrated the health monitor for him to use. I left it for him, but he never did use it much.

Over the years I got to know Frank better, witnessing his extreme generosity. I was invited to see Bruins and Red Sox games and other parties and events where I met his friend, Jay Herod. In August 2013, Frank had left

InVivo Therapeutics and had just started PixarBio. It was an exciting time to see the Red Sox win the World Series. My girlfriend, Dawn, who's here, her parents, my son and daughter went to some of the games in the suites above the field. My daughter got to get on the jumbotron at one of the games, and her picture is still on the fridge.

Over time, I learned about his plans with a new company. Frank was very good at showing his success by throwing his money around and paying for everything. He was uncomfortably generous, and everyone just went with it because it was just the way he was. He always carried a big wad of bills and would let you know.

When Frank met his wife, Mary, Dawn and I had the opportunity to go out with them for more sporting events, dinners, and concerts. We were invited to go to New York to celebrate Frank's birthday and attended their extravagant wedding in New York at Central Park. We visited them at their home and got to know their children, too.

When Mary's daughter received the spinal injury from a trampoline accident, Dawn and I visited her in the hospital and provided whatever support we could to them. We considered ourselves really good friends. We cared about them and their family.

When Frank, Jay, and Ken Stromsland created their scheme to raise money and defraud all of us by merging BMP

Holdings into PixarBio, we, of course, the two of us were on the friends and family list of investors. I ended up investing $40,000. Dawn invested 80,000, which I hold myself responsible for, because I believed in Frank and she believed in me. As the trustee for my family trust, I invested another $30,000.

Around 2015, the healthcare company where I worked acquired a fuel technology patent. I revised the patent and then created a diesel and gasoline additive called "Dynamo," as well as a methanol-based fuel that could be used in flex-fuel vehicles. Jay Herod had a software company, so I met with him and hired him to create a mobile device application to help demonstrate the cost savings of using the Dynamo additives. I met with Jay a few times at his apartment in Cambridge to discuss the app. I got to know Jay pretty well, too.

He was also friends with my brother, Kevin, and my sister, Eileen. Jay finished the app, but unfortunately, it wasn't really utilized. There was a big downturn in the company. They stopped focusing on healthcare, sold off my technology, mismanaged funding, and then unwilling to pay its employees. I know this sounds familiar, because I went through the same thing with Frank and PixarBio.

After many months without pay, I had no choice but to leave the healthcare company that was founded on my

technology. I sold whatever shares I had to survive, and I hadn't -- had to look for a job for many years. I found that it was very difficult to get a job that would pay enough to support me. I had applied for many positions and interviewed with many companies for months. I ended up filing for unemployment. I supported myself and my children by selling stock and extending my unemployment.

In the spring of 2016, I decided to go back to school to study biotech. I applied, interviewed, and was accepted to the applied biotechnology program at BU medical school, which started in August.

For the second semester, we were required to get a part-time internship. There was a special biotech incubator program available that allowed companies to get reimbursed for this internship. So I applied at a number of places but decided to get in touch with Frank, because my goal was to expand my learning, knowledge, and expertise with pharma-related regulatory affairs.

PixarBio was awarded the *Boston Business Journal* best places to work in June 2016. It seemed like a perfect fit, because I was very interested in what Frank was trying to accomplish with pain management. My girlfriend at the time, Dawn, who is here, she had a hip replacement and went through so much pain, and the idea of not experiencing any pain postsurgery was exciting.

In October of 2016, I reached out to Katrin Holzhaus, who worked at PixarBio as Frank's right-hand person. She did a little bit of everything at the company. I find it very hard to believe that Katrin did not have full knowledge of everything that transpired at PixarBio.

I spoke with Frank, and after a few weeks he got back to me and let me know that I could intern there. I was very excited to be able to watch over our investment.

I started my internship in December of 2016. I worked very hard looking at the regulatory pathway for their products. On February 6, 2017, I was offered the position of associate director of regulatory affairs, with 50,000 stock options. At BU Medical, I put together a poster presentation for my final project, based upon the regulatory pathway for neural release. I got straight As in all my classes and received the Paul Queenan Memorial scholarship.

Unfortunately, I only received one paycheck from PixarBio. It was the first real paycheck that I had received in over two years. Just when I thought that things were getting better for me, they got much worse.

I stayed at the company. We were promised our salaries and later received stock options for each week we worked. I continued to work very hard, meeting Frank at his house in Newton, at his house in Salem, New Hampshire, to go over an FDA fast-track filing.

At this point, the SEC was still investigating. Frank claimed that the stock would be trading again soon, but he appeared frantic and paranoid. I wanted to reach out to communicate with the FDA, but he wouldn't listen to me. He always had to control every little detail, even when everyone knew he was wrong. He just wanted something filed with the FDA as soon as possible.

We weren't ready to file, because we couldn't show enough progress yet and details for the FDA to make a clear determination. Frank didn't care. I worked very long hours, packing up the office and labs in Medford at PixarBio, and another lab in Cambridge, with three other employees who decided to stay on. I was convinced that the concept and technology was sound. For some reason, I still believed in Frank.

I saw the video data on the rat studies, and I could see that it really worked. Frank always had something positive to say about how everything was going to go. It was going to go so well, but it was all a lie. Day after day, he used us, knowing that it was all a house of cards. While not paying us, he told us many times that he didn't even take a salary.

However, in 2015, Frank made over -- almost $300,000 in salary, and his reported total executive compensation that year was $860,000. Katrin Holzhaus made

$239,000. Jason Criscione made $226,000 that year. These were the founders of PixarBio. Frank has never cared for anyone but himself.

I felt compelled to stay and do whatever I could to preserve the investments I made for myself and my family. The whole situation put so much stress on my relationship with Dawn, that we ended our eight-year relationship.

My last day at the company was September 13th. I was out $75,000 in back pay, my $40,000 investment, and 30,000 of my family's money. My mother passed away that October, god rest her soul. As trustee, many members of my family were upset about the resolution of the trust and how I had spent the money. And even today, there are members of my family that don't speak to me.

At the end of December of 2016, Frank had 49,133 shares of InVivo, and the stock was valued at $206,000. It appears that all those shares were sold before the asset freeze. Isn't that timely. He appears to have hidden any money for himself and his wife.

I'm a single dad with twins. My son was just accepted early decision to Northeastern for business. My daughter hasn't decided yet but has been accepted to every school she's applied to. This investment was going to help with their education and future. I just want the Court to know how many lives have been affected by Frank.

Why should he receive the maximum sentence? Something I want you to consider when deciding this is that Frank is a person who puts his own self-interest in front of anyone or anyone else -- or anything else, who willfully, purposely deceives and preys upon his friends and co-workers for his own benefit.

Let me walk you down the path of trust, trust in personal relationships, the trust that I had in Frank, in his family. He makes you feel indebted to him, because he pays for everything. You think he's generous and wants to do good for people, but if you look at the evidence, all the evidence that was provided in this trial to -- you see that he was just sucking you into his vortex of deceit. So many of us were sucked into that vortex of false truth.

Thank you.

THE COURT: Thank you, Mr. Doherty.

If I understand correctly, because the victim statements were submitted redacted, Mr. Doherty submitted one, and there were attached to it certain photographs to illustrate the statement --

MR. DOHERTY: I think that might have been in the other.

THE COURT: Is it not true?

MS. BLOOM: Those, I believe, were attached to the other victim who will be speaking.

THE COURT: Okay. All right. Sorry. Thank you.

THE VICTIM: Thank you.

THE COURT: Yes, ma'am. If you give us your name.

I think maybe Ms. Bloom will clarify that I was assimilating Mr. Doherty and the next speaker. Is that right? She has the photographs and so on?

MS. BLOOM: Yes, Your Honor.

THE COURT: Okay. All right.

MR. AXELROD: Your Honor, can we briefly see you at sidebar? It will take 15 seconds.

THE COURT: Okay.

(The following discussion held at the bench.)

MR. AXELROD: Your Honor, this victim in a letter that she wrote largely attacking Mary Reynolds, as well. Mary Reynolds has not been charged with anything; it would be unfair for her to attack her. But attacks on Ms. Reynolds are unfair.

THE COURT: Well, I have to say that a good deal of the defendant's argument, with respect to sentencing, included references to Mary Reynolds and the relationship that they had. I've read the oral statement. That's why I made that reference before. It is uncomfortable; nevertheless, it's been brought into play, so I'm going to permit it.

(Bench conference concluded.)

THE COURT: So ma'am, if you could introduce yourself.

MS. KELLOGG-BLOOM: Good afternoon. My name is Dawn Bloom. Thank you for hearing my victim statement.

I do realize that most of my statement does mention Mary Reynolds, who is Frank's wife, and I also think that it's very important for you to hear how I feel about the betrayal that I feel by their family. I decided to start my impact statement with personal photographs in order for the Court to get a very clear picture of Frank Reynolds' family and friends deception.

I would like to make an oral victim statement at Frank's sentencing. That's why I'm here today. I took time off work to be here. I want Frank and Mary to know exactly how their deception affected my life.

I met Frank and Mary through Christopher Doherty at Frank's extravagant celebration he hosted for himself in New York City in June of 2012. Shortly after I met Mary, she and Frank were engaged to be married. Mary soon moved her family to Boston to be with Frank. This is when I got to know Mary on a more intimate level.

Mary and I had many things in common. Mainly we both had left long-term marriages and each had two children. We talked quite openly about our financial situations postdivorce. Mary was very fortunate. She met Frank who

swept her off her feet, lavishing her with more materialism than she was ever exposed to. I was married for 24 years. I was with my husband for 30 years. I had a very difficult, long, and expensive divorce. I split two private university tuitions, and I was forced to go back to work as a full-time dental hygienist.

Mary, who did not work, was very aware of my financial situation. She encouraged me to invest as much money as I could into PixarBio. Mary shared with me how generous Frank was to allow she, her friends, and her family to invest with Frank's private offerings.

I invested my settlement money with Frank Reynolds, because I believed in his MIT credentials and his paralysis scaffolding he invented while at InVivo Therapeutics. I believed in his long-lasting neural release injectable, which was, according to Frank, the cure for postsurgical opioid epidemic. Because I experienced such severe pain from my own hip replacement surgery, I was very excited about PixarBio's product and the impact it would make for other's pain management.

As an inexperienced investor, I was not aware of the SEC-approved rules for nonaccredited investors, which somehow Frank managed to avoid, for my $80,000 investment into PixarBio. My investment is my annual salary as a full-time dental hygienist. A risky investment one might

say; yet, when I see the depth of deception Frank Reynolds went through to take his friends and family's money, I do not feel as naive as I felt when I first learned of PixarBio's trading suspension.

Frank was always very generous. I was extremely uncomfortable with his generosity and often questioned it. I attended several World Series playoff games in his lavish private boxes, which overflowed with lobster, shrimp, and top-shelf alcohol. I was able to invite my parents to a playoff game due to his generosity.

I considered myself a friend of Frank and Mary Reynolds. I attended their wedding, was a guest in their home many times. I visited Mary's daughter, Lauren, at Spaulding Hospital, when she was recovering from her own paralysis accident. I spoke at length with Mary about private schools for her children. I spent time with her mother, with her best friends, all while Frank was off in another room, in their house, planning and plotting his deception.

How did Frank Reynolds impact my life? I'm going to tell you right now. I invested $80,000 of my divorce settlement money. I also lost my long-term relationship with Christopher Doherty, who was not only an investor, but an unpaid employee of Frank Reynolds. Frank Reynolds' greed and deceit was a direct cause of the demise of my relationship

with Christopher Doherty. Thank you.

THE COURT: Thank you, Ms. Bloom.

I want to be sure that I have --

I'm sorry, I'm speaking to the larger questions there, Ms. Bloom. You can return to your seat.

I want to talk about housekeeping with respect to victim statements here, because there's been a large number of them and they've cascaded in over a period of time. The ones that I -- the form that I've seen them in have had names redacted on them. And I guess the question I raise is whether they don't all go in the docket sheet and accessible. They are matters that I review here. I don't want to compromise people's personal positions. I don't want to chill the willingness of people to come forward with their stories.

On the other hand, the process of sentencing, I think, has to be transparent and has to demonstrate what it was that the judge was exposed to, except relatively limited areas of compromise of personal, say, medical information, that sort of thing.

I had also been a little bit concerned, just as a matter of practice, particularly, and it's exacerbated here by the kind of way in which a victim witness statements get to me, anyway, and I think generally, which is through the coordinator for the United States Attorney's Office, who then

submits them to probation and then they come to the Court. And I -- this is a broader issue. I think, perhaps, it might be better to have them submitted directly with copies to the probation office in the future, so we have a clear understanding. Because I think the coordinator, if I have Ms. Griffin's position correctly, is the one who really knows who's submitting and under what circumstances and who is likely to submit.

So I raise those issues. I'm not sure they can be responded to immediately, but I am relying upon all of the victim/witness statements that I received, relying in the sense of I've reviewed them and tried to digest them and tried to understand what the implications might be for sentencing here. I want to be sure, for housekeeping purposes, that they're available to others who may or may not be directly interested in what it was that was presented to the judge for the purposes of sentencing.

So Ms. Bloom, do you have a suggestion with respect to how to proceed on that?

MS. BLOOM: So I think that we redact them, recognizing that they may be public. And so I think in this case, some of them are quite detailed and personal, so all I would ask is that we have an opportunity to take a second look and make sure there's nothing in the body of them that is more revealing than we believe it should be. I can't

think of anything off the top of my head where I think, "Oh, know, that should definitely not." Much of this thing that might otherwise trigger that have already been the topic of disclosures on public websites. And so this may, in fact, be a balance for that.

THE COURT: Uh-huh.

MS. BLOOM: But I would like an opportunity to review the issue with our victim/witness coordinator, and make sure we don't have some policy that I'm not aware of.

THE COURT: That's fine. I guess I will state on the record that I had been exposed to all of the ones that had been submitted to me in their redacted form; that I consider all that's been submitted to me and will consider it in connection with the sentencing in this case, perhaps a week to decide whether additional redactions are appropriate and called for. If they are, I'll leave it to anyone who wants to challenge the redactions to raise them better with me. But I want the record to be clear that apart from names -- although I've kind of teased some of them out -- apart from names, I've considered all of those documents.

So let me, then, turn -- I take it that there are no others who want to speak directly here or orally.

MS. BLOOM: Not that we're aware of, Your Honor.

THE COURT: Okay. So let me then turn to the presentence report. And I want to be clear on what I do have

in front of me. Obviously, I have the presentence report itself, which is revised as of February 6th. I have the Government's corrected -- for typographical errors, but the version called the "Corrected Sentencing Memorandum," which supercedes the original one. I have the defendant's memorandum and motion for downward departure, and I have the supplemental sentencing memorandum submitted by the defendant, as well.

The question of sealing is not absolutely transparent to me.

Had there been submitted redacted versions of the sealed memorandum? Here, Mr. Axelrod, maybe you can answer for Mr. Reynolds.

MR. AXELROD: Your Honor, for the defense, there have not been redacted versions submitted to the Court on ECF.

THE COURT: Okay. So I will say that I am reviewing all of it. I'll ask you to do the same thing I've asked Ms. Bloom to do, which is, as to those sealed documents, you provide me with -- provide the Court with redactions that are appropriate within a week.

MR. AXELROD: And just file those publically, Your Honor?

THE COURT: Yes.

MR. AXELROD: Okay.

THE COURT: Yeah. Now, if someone says it's been too heavily redacted and we want to see all that the judge saw, they'll make the motion and I'll deal with that, if that arises. But I want the record to be clear with respect to that.

So then turning to the presentence report, because that seems to be the focus of at least the initial layer of dispute, I've gone through it and think that -- I assume that I'm dealing with maybe three things; the most important of which, at least for driving the guidelines in this case, is how we calculate loss or gain.

I also have a secondary question -- I say "secondary," because I don't want to get to them until I've come to closure on the question of loss or gain, but the question of whether or not there was mass marketing done here, if that was part of the scheme that was involved, and related question -- of course they're all related, but a question that arises concerning enhancements for a criminal enterprise involving at least two complicit participants. And as I've indicated, as well, by reference to the assimilation of other individuals, whether or not the defendant, in committing the offense, exercised control over, organized, or was otherwise responsible for the superintending of activities at least of one of the other persons.

Those, I think, are the big ones here. You'll bring to my attention, as we get on to it, anything else that needs to be taken up. They seem to be set forth, you know, fairly extensively in the addendum to the probation office's report, and then they're, of course, discussed in the memorandum, sentencing memorandum that the parties have submitted.

I want to start, first, with the question of loss here, as the, perhaps, way of dealing with this. I recognize that the probation office has taken the position that the gain is not readily -- the loss is not readily identifiable or able to statement and consequently is looked to gain. We'll get back to that in a minute. But I want to understand more fully the Government's theory of loss.

And I guess one way of focusing is: When did the loss take place? On what day? Was there a day?

You know, there's a kind of quicksilver quality to all of the arguments -- I'm not suggesting that anybody's acting improperly, but it seems to me that if I have to calculate loss, I have to calculate it as of a specific date, or else I'm calculating loss differentially for every potential investor in the case, which may be my lot in life, but I want to be sure I know what I'm supposed to be doing here.

So Ms. Bloom, do you want to speak to that?

MS. BLOOM: So I guess my understanding is that we should be calculating loss as of today. And in fact, what we know today is that the shares that these victims received did not have the value that they were led to believe they did. So did they -- did they experience the loss, but didn't know it when they purchased? In any case where there's a fraud as to a --

If we assume, for a moment, a simpler case -- or maybe this is this case -- a total sham, but the stock is trading at $3 a share. So the person buys in; they pay $3. They get a share. At that point, the stock, let's assume it's trading at $3 a share, but it isn't worth $3 a share. And when the true facts hit the market, the stock drops to zero.

I don't know what date you say that loss occurred, whether it was they lost the money the minute they put it into the hands of the defendant. I think you measure their loss by the money they put in, minus what they have gotten back by the date of the sentencing, or still hold of value, if they got something of value. But our position is they didn't get something of value. The value was inflated by fraud and is now revealed to be zero.

THE COURT: I think I understand the overview of it, but traditionally in securities matters, using the kind of analysis that you've used, it's when the market has had an

opportunity to absorb the information; that is, the information about the fraud. That occurred quite a bit before today.

One might look at people who hold as making judgments about -- after the information is absorbed, making judgments about residual value, maybe a partial value, maybe they are less sophisticated in trading, all of those things. But it seems to me that the date is probably the point at which the market could have been understood to have absorbed the information about the fraud. And that's not generally months, that's within a very short time of when the fraud is disclosed.

Now, you could say maybe the day of the -- that -- or the day after the SEC stay is put in place; maybe it's a later point at which there's some clarity about the information. But I think there has to be something a little bit more precise in order to -- in order to make the calculation that the Government presses on me, which is some form of loss calculation.

MS. BLOOM: So let me first address one thing you said, which that, if the investor retained the stock, they were making a decision. So I think when you're talking about an unregistered, privately-held stock, that assumption is not justified.

THE COURT: Can I pause with that for a minute. It

raised a little bit by Ms. Bloom's statement, but I want to be sure that I've understood.

Everyone here signed a stock subscription who got stock, right? Who had private -- who had privately-held stock?

MS. BLOOM: (Nods head.)

THE COURT: And in that, they made a representation about being suitable investors?

MS. BLOOM: Yes and no.

THE COURT: Let's use Ms. Bloom -- or maybe not familiar enough with the specifics of her -- if I have it right, it was Ms. Bloom; is that right? Or am I mispronouncing her name?

MS. BLOOM: Yes. And that explains my slight confusion.

THE COURT: Right.

MS. BLOOM: But some of the people --

THE COURT: But the name of the individual who gave the --

MS. BLOOM: I believe she had a hyphenated name, which may help us distinguish ourselves. I believe it was Kellogg-Bloom.

THE COURT: It's Kellogg-Bloom.

MS. BLOOM: Ms. Kellogg-Bloom.

THE COURT: Okay. But so she represented that she

put all of her -- the equivalent of her yearly income into this. The -- generally the touchstone is a million dollars worth of net worth. Was she given, to your knowledge, a subscription agreement? Did she check off the subscription agreement as to suitability? That's the first question.

The next question is, can't people like that dribble it out through 144?

MS. BLOOM: I didn't catch the second question, but let me answer the first question, which is some of the victims did check boxes. Some of them, we understood, maybe have been checked by people at PixarBio. Some of them simply left the boxes unchecked. And many of them, we believe, were clear that they were not, in fact -- they had $2,000, they were $1,000, and didn't -- probably were unsophisticated enough, although the language was in the subscription agreement, they didn't check something, didn't understand that they needed to and that were representing that they were accredited investors.

THE COURT: Okay. So if it's going to be relevant, that's -- presents individualized determinations about each of those persons to some degree.

But the question that I raised, that you were probably focusing on the first one. It's unregistered stock, but unregistered stock can be dribbled out, generally, through 134. They have an opportunity, don't they, to engage

in those kinds of sales. That is to say, they're not locked up entirely with the unregistered shares, or are you going to tell me otherwise?

MS. BLOOM: It is my understanding that because the shares were never -- the SEC registration statement was never approved -- that had it been approved, they would then have been able to release them and sell them. But the agreements themselves provide that they cannot be sold or traded until there is an approved registration statement. A registration statement, as you probably recall, was filed. The SEC raised a number of concerns. Some of them related to the fraud issues, and it has never been confirmed. And so those have never been -- become subject to a valid registration statement and, therefore, it is my understanding, cannot be traded. I think under *Prange*, that doesn't mean they have necessarily --

THE COURT: I'll get to that at a later point.

But Mr. Axelrod, do you disagree?

MR. AXELROD: I think there are some exceptions under Rule 144, and also, I think if we're going back to the accredited investor issue, I think there are some exceptions for a limited number of small people who don't qualify as an accredited investor --

THE COURT: Modest investors, rather than "small people."

MR. AXELROD: Yes. Sorry. A small number of modest investors under Reg D, even if it generally requires accredited investors. But we're really diving into Reg D issues that I didn't come prepared for today.

THE COURT: But I want to understand it, because it, to some degree, in a broad brush, because it impacts this. A way of looking at it is there's no registration statement. There was no opportunity easily to dispose of the shares. Fixing the value at -- putting to one side various personal reasons and maybe lack of sophistication in trading or trading in bottom-feeding kind of shares that the defendant -- that the victims could not take steps to dispose of the shares, so we deal with the shares right now, what the value of them is right now.

MR. AXELROD: Well, I think we need to be pretty careful, rather than just simplifying all of the investors as one group. I mean, as you may recall, Your Honor, from testimony at trial, there was two raises, one that began in 2015 and went into the beginning of 2016, the friends and family raise. And at that time of that raise, there was no contemplation that the stock was going to go public. Everyone who signed on as investors of that understood that they were buying a privately held stock that had no market --

THE COURT: Well, no, they weren't buying certificates suitable for framing. They assumed that there

might be long term before it became public or at least was tradeable.

MR. AXELROD: Potentially. But they knew they were buying a privately-held investment without a discernible market.

THE COURT: That may be so, but the question is, did they, at that time, buy on the basis of manipulative trading or false statements? If they did, and the jury's finding in this case, as far as I'm concerned, mine as well, is they did, then the issue becomes what's the value that we can assess if we're saying loss is not going to be complete loss? Or we look at some of the, perhaps, less complex cases that other courts, including the First Circuit, have dealt with.

MR. AXELROD: Your Honor, I'm not going to quibble with the jury's finding or your conclusion about the jury's finding, but of course there are a number of investors -- and this is a different issue and I don't want to complicate, but I don't want to leave it. There are a number of investors who we don't know why they invested. They're insiders who had more information than the general investors. So I don't want to just concede that everyone who invested in the company was --

THE COURT: But is reliance a requirement here in a criminal case by individual investors?

MR. AXELROD: It's certainly not an element of the Government's case to bring. But for sussing out who is a victim of the fraud, I think it is. I mean, you're going to have people here and you're going to have insiders who had perfect information about what the company was doing, and I would argue that those are not victims as the guidelines define a victim. They didn't invest based on some misknowledge or misapprehension of what they were getting into. But --

THE COURT: I don't mean this to be too arch, but it is arch. We're going to blame the victims?

MR. AXELROD: I'm not blaming the victims at all, but there were a subset of people who invested in this company who were insiders. I'm not blaming them for investing. I'm just saying that they -- it's hard to say -- even assuming the jury's verdict is correct, which I'm doing, it's hard to say those people were defrauded. Those were people who worked inside the company who --

THE COURT: I don't know why that would be the case. If Mr. Reynolds puts into the market false information, engages in manipulation of the market, then those who are purchasers in that market are adversely effected by his actions, I'm not sure there's a discount for them. I suppose there's an *in pari materia* kind of defense that might -- or discount that might be involved. But

everybody who is involved in this loses money, including, of course, Mr. Reynolds, who invested $8 million, I guess, with family, on it. But the loss here, as a result of the misrepresentations or perhaps the grandiosity of Mr. Reynolds' views about this and various other things, is less important to me, anyway, in trying to figure out who's the victim. It's someone who didn't get what they thought they were buying, and that applies to even those who continue to support and embrace Mr. Reynolds.

MR. AXELROD: I think that, Your Honor, there is a subset of people who did invest, who got exactly what they thought they were getting. And those are the people like Mr. Reynolds, who were inside the company, who knew exactly what was going on, who knew exactly what the timelines were.

THE COURT: Well, who would that be? Just not to characterize it or personalize it, but would it be Mr. Doherty?

MR. AXELROD: Well, if we're talking about the issues that I raised in the sentencing memorandum, you may remember there was a Jason Criscione, the chief science officer, or technology officer. His parents invested. He certainly knew what the time frame was for FDA approval.

THE COURT: Uh-huh.

MR. AXELROD: So he's one, I would say. There are board members who invested, who would presumably, if they

were doing their fiduciary duty, had full knowledge of what the company's outlook looked like.

THE COURT: Okay. So let's just, for loss purposes, which --

MR. AXELROD: I know that places it far afield, Your Honor.

THE COURT: No, you weren't. I mean, there's still boundaries that I'm trying to think this through on. But we take those people, and we take them out of the list. You identified them and Ms. Bloom can argue about them, and we'll see where that leaves us in terms of loss. But there's some subset of people who lost on the basis of the conduct of Mr. Reynolds, and that, it would seem to me, is where I would find loss in this case.

MR. AXELROD: Your Honor, I was really taking on a different problem. Unfortunately, I went there. I agree that, based on the jury's finding, that there was some subset of people who lost. I do not think -- I do not agree with the Government that that amount that they lost is so easily discernible. This case is not as the *Prange* court talked about, the flimflam sham.

THE COURT: You know, I read those cases, and of course, you try to apply them to your own, but -- and they're not this case. Fraud is versible. It expresses itself in a variety of different ways. It can be the flimflam artist.

It can be the embezzler who thinks he's going to pay it back. It can be the person with a grandiosity. That may be what we have here with Mr. Reynolds. But the short of it is that it feels the same to the people who are out the money, who can be called victims, irrespective -- it feels the same monetarily. It may feel like more of a betrayal of faith if their personal relationships, or the suggestion of being drawn into a vortex of deceit, but that's not something I value. I value it in terms of loss value. It's something I'll consider, obviously, for purposes of sentencing.

So I guess I would want to know, you know, what you think -- and maybe I shouldn't be doing it this way, but -- because it puts a burden, to some degree, on the defendant, although we're there, is who's out in this list? And if we start checking them out, where do we get to in terms of loss that's cognizable for purposes of deciding what kind of additions to the base offense level are involved?

MR. AXELROD: I say this, with all seriousness, this is -- that the guidelines calculate -- stress that when you're calculating loss, you give an offset of what was exchanged at the time of the investment.

THE COURT: Well, what was exchanged at the time of the investment here is the difference between the value then and the value now. That's why I started by saying we've got to focus on when we're talking about. We've got a

circumstance in which the investors really have no way to divest themselves of it. We're here on sentencing day. There's been some movement, brokers might call it death rattle activity on the market, involving modest amounts of money for being offered or as bid an offer. Maybe there's something out there. You know, we have suggestion there's some intellectual property that can be paid for. Maybe. But in any event, we're here for -- to try to find a fixed time for dealing with that. And I -- if it's not today, I don't know what other day it is -- I know what day it is, but what other day it is for making the calculation.

And you know, there may be people who don't belong in that class. Okay. Knock them out of the class. But we've got to figure out -- or make an effort to figure it out. Probation made a good faith effort. They were not satisfied that they were going to be successful in doing it. They made their determination.

I'm not so sure that you can't successfully identify loss in this setting, loss to the individuals, without even getting into intended loss.

MR. AXELROD: Well, Your Honor, I obviously think you can. I think the guidelines specify that you take the value of the shares exchanged at the time they were exchanged. And when you look at the guidelines and the commentary notes, it talks about in a case of where

collateral is exchanged in a mortgage case, and it says there, you take the collateral on the date of sentencing. But it doesn't -- they use that same language in terms of investment cases.

THE COURT: That's an application note, if I recall.

MR. AXELROD: It certainly is.

THE COURT: So what do we do here? We've got unregistered stock, not easily tradeable. At this stage, based on the discussions we've had, without diving into Reg D and 144 and all of that, willing to say there really is -- they had no way to get out, because the S-1 was never effectively -- that never wanted to -- effectiveness. And the reason it didn't go into effectiveness is the fraud itself; that is, the concerns of the SEC, which were vindicated, at least in this case, by the jury's verdict.

So they had a value on a particular day, whenever this information could properly be absorbed by the market, and then we've got the difference between the value on that day and today. And the value today is -- I'm not sure visible to the human eye.

MR. AXELROD: It's something, but we don't know.

THE COURT: Well, more than that. Is there any trading on it?

MR. AXELROD: Public trading, no. But I mean,

as -- I mean, we're jumping around. But as Mr. Abrams said in his letter to the Government, that he and others who are still working with the company believe that there is still some inherent value in the company. So I don't think we can just assume, with nothing more, that there is no value in the shares.

THE COURT: Okay. So I mean, there's a triumph of hope over experience, I guess, is one way to describe it. That's used in a different context, but it describes what's going on here. Investors think that they've got some chance to get something, but you can't find anybody out who's -- you know, arm's length purchaser for value, who's going to pay any money for this, or at least it doesn't appear that they're going to pay any money for it. And so I guess I'm of the view that it's valueless now.

Now, if it's valuable in the future, Mr. Reynolds still holds his shares or can choose to hold his shares or maybe Judge Young will decide whether he can hold his shares. But in any event, that can be applied, I suppose, to -- as a discount, against -- if it comes in, a discount against restitution in a case like this, which is the other area in which this calculation of loss goes, but I don't think that anybody could say -- that anybody who would be an arm's length purchaser for value would say, "I'll take a flyer on this one."

It's dead. So no value today. That would -- market is probably as good a place to figure that out as any. There's no public trading in it, no value.

Now, there -- as I said, there may be people who value hope over experience and -- but that can't be the basis for valuing it. So then we've got this delta between what did they pay for it under misrepresentation, and what do they have now? They've got zero now. I don't know whether we can promptly go through this and say, "Okay, maybe it's not $9.5 million. Maybe it's a different spread," but a spread in which all of us can say comfortably, somewhere in there, in going through this.

So Ms. Bloom, do you want to speak to that?

MS. BLOOM: Yes. Let me see if I can offer a couple of options and insights.

First of all, I think that, as the Court, I think, recognized, the fact that someone is an insider does not mean that they were not defrauded. We heard from multiple witnesses who believed that when the defendant announced something that there was $30 million, they thought the company had $30 million.

THE COURT: But there's certainly the case that it's differential.

MS. BLOOM: There could be a differential.

THE COURT: Let me just -- so I can frame the issue

that you can respond to. Insiders are controlled in various ways in their transactions and securities because of a presumption that they have access to information. And so they're trading, if not barred -- although in some cases it's barred, if not barred, is limited, and that's -- presumption is based on the idea that they have more ready access to information than others in the marketplace might have. And so I won't necessarily call them colleagues, but maybe fellow travelers of Mr. Reynolds might be assumed to have that kind of information. Mr. Stromsland might, Mr. Herod might, and there may be others.

And so I'm just trying to figure out, you know, if we take -- it may not be a scalpel, but I don't want to use a meat axe, to the list of victims, where might we be making the cuts?

MS. BLOOM: So we took out of the list Mr. Stromsland and Mr. Herod, their spouses, their children. We did not take out people who were their parents, their uncles, their -- because we didn't feel like we could impute to them the knowledge that -- but for the defendants' immediate families, we removed all of those.

Having spoke -- as I think you may recall from the trial, many of the people at the company described a very siloed set of information. And so while I think it is fair to say, you know, did Ms. Phelan have access to more

information about inaccuracies? Is there some kind of concept of contributory negligence in victimhood? I'm not sure. We have not done a list of certainly not all of -- Mr. Lovett, who I think was an investor, but certainly didn't have access to all of that information.

My suggestion --

THE COURT: Why wouldn't statutory insiders be clearly prescribed?

MS. BLOOM: Well, I think that would be -- would that be officers or directors?

THE COURT: Right.

MS. BLOOM: So I don't believe anybody other than Mr. Stromsland.

The question would be Ms. Phelan, but I don't think anybody else -- and maybe Mr. Criscione.

THE COURT: So let's take Ms. Phelan and Mr. Criscione, and look at how much they had.

What did they have?

MS. BLOOM: That's -- let me look at -- I believe we have the full chart. Mr. Criscione, in terms of actual investments, we're looking at 22,500, and I believe Ms. Phelan was 15,000. Mr. Criscione gets more shares, but most of those are just by virtue of getting options and being an employee. And we only counted money in for purposes of victims. So I'll double-check on Ms. Phelan. So I don't

think either of those would be --

THE COURT: That doesn't get us down to 9.5 million.

MS. BLOOM: No.

THE COURT: So now I'm trying to figure out, Mr. Axelrod, do you know where we get to those kind of steps that generate the guidelines, and if you've got suggestions of other people who are putatively or questionably victims here?

MR. AXELROD: Your Honor, I'm certainly not conceding that this is the right way to do it, because I still think we haven't found out what the offset is for the value of the shares. But to answer your question, Bernard Ho was a director of the company. I think he invested over $400,000. David Cass was a director of the company. I don't recall what he invested. I can go through the list, there's more, but there's other problems, also, with this list.

The Government found it, presumably, in documents produced to the SEC. But if you look at our submission, there's also people on this list who are recorded as buying in the open market, which put them in a different position than people who bought in the private offering.

THE COURT: Why does it? I mean, I suppose one way to say that is because they could have unloaded as soon as they found out the information and gotten some residual

value.

MR. AXELROD: Correct.

THE COURT: Okay.

MR. AXELROD: There are also people who bought after January 27, 2017, on this list, who bought after the SEC freeze. I think that they're in a different bucket, as well, because by that point, they had seen that the SEC, the market information that had hit the market was out there and was known. So I think that --

THE COURT: Out there that there was suggestions of impropriety.

MR. AXELROD: So I think they're different, too. So I don't think it's as easy as simply removing Mr. Stromsland and Mr. Herod. I think there's a couple of buckets that can be excised, if Your Honor thinks that that's the appropriate way to go, which I still don't necessarily agree with.

THE COURT: Nothing I've heard so far, but perhaps I'll hear something else, tells me that it's not, to be perfectly candid. We can make this more complex than is necessary. I'd like to apply Occam's razor as my scalpel to get to the core, which is they bought at a certain time, you were someone who is unaware of the information, all the evidence suggests you were unaware of the information. There was a value, and now there's no value. And that's easily

identifiable by what they put into the market, not what they put into the purchase of the shares, either in the open market or out of the open market.

I might think about, you know, a different date for the open market people, but I simply don't know what -- I don't have that breakdown.

MR. AXELROD: Two additional critiques. The *Prange* case says that even registered shares have some value. Now, I don't know what that value is but --

THE COURT: Yeah, I read that, and I'm not sure that it resolves cases. You know, no piece of paper is beyond redemption would be another way of describing that language from *Prange*. It doesn't decide questions of loss here. There could be value, but, you know, the value, from my perspective, has -- something like this should be some market, private market, open market, whatever market. And all I'm aware of is that there was a public market, and it tanked.

MR. AXELROD: Okay. And then my second point would be, Your Honor, there's a group of investors that we haven't talked about yet, who are friends and family of Mr. Reynolds, who did not invest because of misrepresentation, but invested because of their belief and their knowledge of Mr. Reynolds. And I don't think --

THE COURT: Mis -- benighted knowledge. I mean,

you know, what we have is someone who is engaged in fraud, who makes the tender of the opportunity to invest in fraudulent securities, and says, "I do that only for family and friends." I'm not sure that they fall in a different category, unless, of course, they knew that this was part of the scheme and they wanted to participate in it. I don't see that at all. You know, this is created as a kind of, "But for you, a special deal," and the special deal is to get something that becomes worthless after awhile.

MR. AXELROD: That's certainly not what I'm suggesting. I'm just saying that these are different than people who say, "I invested because," to pick one of the misrepresentations, Mr. Reynolds said that he cured himself of paralysis. They didn't invest because of that. They may have invested because they were friends with Frank; they saw his drive, and they saw his -- they believed in him.

THE COURT: So that gets to a reliance question of whether or not loss depends upon reliance. I'm not sure that it does, in the sense of a determination that there has been market manipulation and misrepresentation.

Now, maybe it does have to be sliced that thin. But it seems to me, we go through the list in some -- to identify buckets, but I'm not sure that it's going to get us much below the next tier of money involved here. I mean, you know, it's something.

And I have to say, as you all know, or probably know, the guidelines are placed, for me anyway, to begin. They are rarely a place I end up, but I want to know what the figures are. I happen to, as a matter of policy, think that they are in the fraud area a little bit like the sorcerer's apprentice and subsequently don't give us a full understanding of what the actual culpability is there. They're a way of thinking about culpability, but they don't do all that is necessary, nor does the Supreme Court expect that that's going to be the case. The judge has to apply some judgment in this area, but the first thing I've got to do is get them right. So --

MS. BLOOM: So keeping in mind the fact that this is not the ending point, I looked through this list, and maybe if I make a suggestion of a couple more people who are insiders, who at least could be considered to be in a slightly different position, whether I agree that they're not victims or not, it might get us below the 950 level --

THE COURT: 9.5.

MS. BLOOM: 9.5.

THE COURT: Million here, million there, kind of?

MS. BLOOM: Yes, and therefore, put us in a range where it would be a reasonable estimate to think that there are losses clearly above 3.5, and I'll give you some other reasons for that, but under 9.5.

THE COURT: Well, another way of doing it is not to back people out, but to tell us what people are indisputably in there, and that means finding $3.5 million worth of losses by people who can, with reasonable certainty, be expected to be those who relied upon representations -- I say "relied upon," without introducing that as an element, but who expected representations to be accurate, bought, and there was fraud and there went -- there went all of their money. So --

MS. BLOOM: So let me try both approaches, and see if we can get to a comfortable place.

THE COURT: Okay.

MS. BLOOM: So I -- just in noting a couple of other people who had larger investments who had some more inside connection, Mr. Axelrod is right, that Mr. Ho was in the 416- to 419-thousand range. Mr. Kaplan, who was also an employee, was in the $200,000 range. And I noticed Dr. Maita, who I believed worked with the company and probably had more information.

THE COURT: It is reported, as I recall, as being here to provide support during the course of the trial for Mr. --

MS. BLOOM: No, I think that's someone else. That other person who is reported as being supportive filed a victim statement claiming $700,000 in loss.

THE COURT: So he was a supportive victim.

MS. BLOOM: So he was a supportive victim. So I don't think we can move him out of the victim category without an express release of that victim status, but I think that if I added those together, I got to -- I think we were at about 1.3 million, so we'd need -- 10.3 million, so if we take out $800,000, I thought I got there.

But I think what we're saying is if you think that the insiders are in a different category, that might bring us down a category, and I would hope that Mr. Axelrod and I could sit down and work through the list, if that would be helpful.

But let me go to the other end of the spectrum, which is, as to the victim statements that have been submitted, the total of those numbers and adding in Mr. Abrams who testified at trial as a victim himself, that comes to 1.8 million. So I would say, at a minimum, we are clearly above 1.5 million. Mr. Abrams testified that the clients of Newbridge, alone, invested about 2.5 million. He was part of the group who decided to go forward on behalf of Newbridge, and he testified that the false statements were significant and important.

Now, I want to be clear, that 2.5 million does overlap with the 1.8 million I just discussed by at least a couple of hundred thousand.

In addition, Ms. Phelan testified that, and there was evidence that there was about 5.7 million raised in the private offering in the summer and fall of 2016, during the time period when the false press releases were being released, claiming that the subscription was oversubscribed. I think it would be reasonable to assume that the investors who came in during that time, when the false materials were clearly being circulated and the -- and where we've heard that even the internal employees, the only people who knew that those oversubscription statements were false, were Ms. Phelan and Mr. Reynolds, as best we can determine, that all of that 5 million could be considered at a minimum.

THE COURT: I don't want to extend this; on the other hand, I want to get it right. And I understand, in a rough sort of way, what you're saying, but I want to be sure that I'm in the proper range, reasonably calculated under these circumstances. And so I think I do have to ask you to refine and do it by reference to particular categories that may be temporal, may be status based as a way of parsing through this a bit so that I've got some number. Because working from the bottom up, you're in a different range than 3.5 million. That would be 3.5 to 9.5, and that generates a big difference in the guidelines.

As I said, I view these guidelines as not only are they helpful and nuanced, but first I got to get them --

whatever it was that is supposed to be the calculation, I've got to get that right.

So what does it take to do it? I want to go through other things today, but I -- do you want to come back tomorrow and do it? It's Valentine's Day, Mr. Axelrod, you can --

MR. AXELROD: At the risk of giving the Court too much information, you're talking to two lawyers without any bags, but I should have rightly anticipated such a thing. But that poses some difficulty for us.

THE COURT: So when?

MR. AXELROD: Could I have a second, Your Honor?

THE COURT: Yeah.

(Counsel confers.)

MR. AXELROD: Your Honor, unfortunately, I think next week is probably the best option for us.

THE COURT: Okay. So you came to the right place, because I had settlements and pleas, so the next week will be fine. We can find time in the mornings of next week, I think.

Ms. Beatty?

(The Court and the deputy clerk confer.)

THE COURT: So Tuesday, which is the 18th. And can we start at 9:00? 10:00?

MR. AXELROD: Your Honor, if I would, I would ask

to start at 10:00. We'll catch the 6 o'clock flight up that morning.

THE COURT: Okay. 10 o'clock.

For that aspect, I want to get to the question of loss, at least to parse it the way in which we've been talking about it now. I haven't finally decided, obviously, but that's where I think we're going. I don't think I can properly hear talk about intended loss on the part of Mr. Reynolds, but I'll hear argument that you want to make. The reason I say "intended loss" is that imports an intent that, what I know of Mr. Reynolds, tells me is inconsistent with his grandiose sense of what is going on. I would have to blink at the $8 million investment that he kept himself. Now, that doesn't mean that he didn't act with the intent to commit the crimes themselves, but what it does mean is the culpability that's calculated by that alternative mechanism of thinking about loss is more problematic here, with someone who, I'll just broadly say, whose psychology is as -- was presented here concerning Mr. Reynolds.

That doesn't end the question of loss, obviously, but unless there's something more that you want to say about it, to people who are said to intend the natural consequences of their acts, I perhaps often think about that.

MS. BLOOM: Well, I understand that you and frankly, initially I had that approach myself. And I went

back and looked more carefully at the cases, and I thought that the First Circuit actually says it's the total degree of loss that the defendant could have reasonably expected to occur. And the First Circuit in *Appolon* quotes, with approval, *United States vs. Bonanno*, saying, "How many dollars did the culprit scheme put at risk?" And if the question is did he know he was putting these victims' money at risk, the answer is absolutely. Did he believe that he was going to lose it? Perhaps not.

THE COURT: So he intended it by being reckless at putting people's money at risk? It's a recklessness standard? Is that what it is? Because I read those cases, too. I'll go back and look at them, to see if there's something more, but I have to say, when we get into scienter, and the Supreme Court is getting into scienter quite a bit now, it's a dog's breakfast of language that doesn't provide a consistent theme to the pudding, and so I'd like to look at this more carefully.

If you say recklessness is enough for that purpose, I'll think about that. But I want something other than, you know, fraud is divided into two parts, the fraudsters and the people who do it with the $80,000 nut and then get another $20,000. I just think they're singularly unhelpful as ways of looking at these things. I'm just trying to figure out, what do I do with someone here who is reckless, I guess.

Maybe that's the -- a way to say it. Does that count as grounds for introducing the requisite intent?

MS. BLOOM: I think that my reading of the First Circuit cases, and I think the Fifth Circuit case, maybe Seventh Circuit, is you call it reckless, and maybe that's the right -- it is you are intentionally putting someone's money at risk. Intended loss, in the way I understood it before looking at these cases, might mean do I intend to lose the person's money. But many people who commit frauds and put it into some risky thing do not intend to lose, they intend to -- they think they're somehow going to make it all work out. And clearly the cases have stepped back and said: You don't have to plan to lose everybody's money, but if you know, you're -- that's a likely result, then that's your intent.

Now, this case comes, I think, a step down from knowing it's a -- the pure Ponzi scheme, where obviously, eventually, the house of cards is going to have to fall. And I recognize it's a different case; that here, it -- although a rational person might say, obviously, "This house of cards is going to fall," it doesn't -- we don't have the feel that the defendant was sitting there facing that fact. But does his failure to face the fact that if you bring people into an investment in a company that's based on a series of lies from A to Z, there's a risk they're not going to get their money

back, just as there was a risk he wasn't going to get his 8 million back, and you've taken their money by fraud.

THE COURT: Yeah, okay. So why isn't that just actual loss, rather than intended loss?

MS. BLOOM: Well, because actual -- the only real difference, I think, here is that it -- you don't get into the vagaries of, well, what did actually happen when the shares dropped to zero. It was foreseeable that the company would be worthless; whether it, in fact, became worthless, we don't have to then argue about.

THE COURT: Well, but I think that's where I start, to be perfectly candid. I want to figure out what the loss is. Was it intended? Was it actual? The intended becomes much vaguer than actual, but I understand your point. Maybe we'll get to that question.

I want to turn to the question of gain, however, and understand more fully what the Government's objection is to using, as an alternative, gain here. The probation office offers it. I don't think the defendant is objecting to the probation office's determination of gain. So what's the -- what -- except that the theory that you started with was much higher with loss than it was with gain, but as a matter of concept, what's the difference?

MS. BLOOM: So I think that -- two questions here. If you're going to gain, is this the right calculation? Let

me get to that next. But our view is that the correct calculation that is a reasonable estimate of loss here, that that number is much larger than the gain, and therefore, that that is what we needed to argue for and support. I think when you can see, when we came to --

THE COURT: Okay.

MS. BLOOM: -- recommending a sentence, we didn't actually stay there, but that to us is what seems like the right number --

THE COURT: Okay. So with respect, that's a bit result-oriented for my taste. And so now when I understand the concept, that is to say if we conceptually think of what the gain was to the defendant, what's the problem with it? You said there may be a calculation problem?

MS. BLOOM: So the 900 and -- I think it's 920,000 that he came from -- that Mr. Herod made, he's a co-conspirator, it's a gain to the co-conspirator. I don't think there's a problem with that piece of the calculation. Mr. Reynolds received an additional, about, in the last two years, a compensation of about $922,000, which was at a time when the company was receiving all of its money, essentially, from the fraudulent financing. And so we would argue that if you're going to look at gain, you probably should also include that amount as part of his gain, which he could not have gotten but for bringing in money by fraud.

THE COURT: So what difference does that make? I mean, that's a computational difference -- as calculation, what difference does that make?

MS. BLOOM: So 900,000 plus 950, I believe, puts you over the 1.5 million.

THE COURT: Uh-huh. Okay.

MR. AXELROD: I don't know what the basis is for the 900,000. The first time I'm hearing that.

MS. BLOOM: I can actually -- I have some documents showing those numbers. I can provide those right now, or I can do them after the hearing.

THE COURT: Maybe it's more useful, so we can get through all the things that I want to get through, that we can get through today, because I want to deal with all of these things, you know, promptly when we get back here.

But returning to the way in which the probation office did its calculation, just so I understand what the departure might be for the -- from the Government's approach. I want to go to the specific paragraph. Probation has the -- I'm looking at paragraph 48. Probation has the figure as being $910,000. I assume that that's related to the transactions of Mr. --

MS. BLOOM: With Mr. Herod, yes.

THE COURT: With Mr. Herod and Mr. Stromland, yes. And you're adding something else to it?

MS. BLOOM: Yes, I'm adding his --

THE COURT: His compensation during that -- or his -- yeah, compensation during that time period, after the fraud is committed, but before it's disclosed. Okay.

MS. BLOOM: Some of that is from 2017. I think the question of what it means to say when it was disclosed may be a tricky one. So that might shave off a little.

THE COURT: But I want to clarify that here, because I think, unless somebody moves me off this, that it comes to this that what did they think they had when they purchased it. I'll take that as their fair value. And the second issue is what did they have as of today, or maybe it's Tuesday, in terms of a value, which, apart from saying that even penny stocks have some value, I guess, is another translation of *Prange*, but not have one here. But I really do want you to be able to focus on this or say, "We just can't figure it," in somehow -- or one of you is going to say that, I suspect. Okay.

So now let's then turn to the other outstanding issues presented by the guidelines and see if we can resolve those at least today, so that we're down to a question of loss or gain if we come to that. The -- let me use the defendant's objections, which I think are the -- apart from the loss/gain thing, which is the Government's objections, the remaining objections are those of the defendant.

MS. BLOOM: There might be one thing that I would like to clarify that may save us some effort, which is, if there are more than ten victims, then the mass marketing -- that overlaps with mass marketing, so we only need to resolve one of those issues. Intuiting where you seem inclined to go on loss, it seems obvious that there are more than ten victims. And therefore --

THE COURT: Right. Is there any question about that? Whatever the victims were -- I'll make the Government identify their best ten, or maybe give them a baker's dozen, but that gets us over that if we have to do it directly.

MR. AXELROD: Not to be too academic, but I guess I will. I mean, the guidelines define "victim" as -- and this is 2B1.1 application, note 1, "Victim means any person who sustained any part of the actual loss determined under subsection (b)(1)."

THE COURT: Right. And that's why I've been focusing on actual loss. But assume that we get to actual loss. Assume that that's here. There doesn't seem, to me, to be a question of about ten victims or more.

MR. AXELROD: If Your Honor determines that you can calculate actual loss, which we object to, then I think that that follows logically that you could get to the victim count.

THE COURT: I think I could do that, even if I

don't base the enhancement on actual loss. I can do it on gain, but I can say that there's actual loss with respect to at least ten victims. But in any event, do you agree that that remains open? You can consider it to be remaining open, but giving me a Whitman's sampler of actual victims will probably satisfy that part of it.

MS. BLOOM: Your Honor, I have gone through the list of victim statements and identified ones that I believe I clearly identify that they have a victim loss -- probably all of them do. But if you like me to read the numbers, I'd be happy to.

THE COURT: Why don't you give me a list.

MS. BLOOM: File it?

THE COURT: Yeah, file it later.

MR. AXELROD: And Your Honor, there is difficulty with us here, and I'm sure Ms. Bloom can do this, but we only received redacted copies, so it would be very helpful for my analysis to actually see the names of who those people represent.

THE COURT: Okay. That brings -- and I think you should, but that brings me to another question that had to do with the request for the sealed hearing having to do with jurors. I would be happy to provide that -- satisfied to provide that to counsel. Under the circumstances, I would want an undertaking by Mr. Reynolds that he would not

directly or indirectly contact any of these victims or any of the jurors here. He is under that obligation generally in this circuit, but as a kind of belt and suspenders, I would like to have that undertaken. I understand it's an assented-to motion with respect to that transcript, but that's a condition.

MR. AXELROD: In what form? I can certainly give the Court my assurance that I will instruct Mr. Reynolds --

THE COURT: And I appreciate that. That's not enough. So I want an affidavit from -- or declaration from Mr. Reynolds that he will not contact, directly or indirectly, any juror member, and that, frankly, if he does, that he's exposing himself to separate consequences.

MR. AXELROD: We can do that and that was not our intent to file a motion.

THE COURT: I understand. But this is, as I say, belt and suspenders or trust and verify. The same concepts are at play.

MR. AXELROD: Yes. Yes, sir.

MS. BLOOM: Can I just elaborate that "directly or indirectly" includes making any kind of statement, public statements, or notice on website, given the history of personal attacks in website, that there would be none of that with respect to any victim --

THE COURT: I think that that fairly comprehends

it -- I mean, is fairly included in it.

MR. AXELROD: The intent for getting that transcript, Your Honor, was solely to use it in judicial proceedings.

THE COURT: No, I understand that entirely, and I intend that that's the only place it's going to be used. But sometimes incidental use takes place, and I want to be sure that everybody understands the ground rules on that. And specifically Mr. Reynolds, but everybody involved, without suggesting misconduct.

MR. AXELROD: We'll submit that.

THE COURT: Okay. So back, then, to this question. It seems to me, on that basis -- or maybe it doesn't have to go to Mr. Reynolds; that is, the victim statements, name identification. You tell me whether you think you need it. If you need it that way, then I'd like the same undertaking.

MR. AXELROD: Yeah, I do need it, Your Honor. We will put in the undertaking that Mr. Reynolds will not contact the identified -- we already have the information in the unredacted spreadsheet, but we don't have the names and numbers.

THE COURT: No, it was very hard. It was hard for me. I should have been more careful when I said to Mr. Doherty that he was the person who submitted the photographs when, in fact, it was Ms. Kellogg-Bloom. And so

keeping track of it is hard without the actual names there. So the Government will provide you with the unredacted versions of those victim statements that they're going to rely on for the ten or more.

So then let's go to the questions of -- that is also raised by the defendant, I think, this is the last objection to the calculations, concerning a two-point role adjustment for the Government proving that there was a criminal enterprise that's involved here, involved at least two complicit participants, of whom the defendant may be counted as one; and the defendant, in committing the offense, exercised control over, organized, or was otherwise responsible for superintending the activities of at least one of those other persons.

So certainly for purposes of Mr. Stromsland, I don't have much problem saying that. I don't know whether that extends, then, to everybody else or other people. Or it might be a different way of saying it, to the other offense conduct. That is the core securities fraud violations.

And so do you have a position on that here? That is to say, we've got Mr. Reynolds making the false statements -- I'm not sure who else helps him in that or who else the Government contends helps him in that. You might be able to say Mr. Stromsland. I don't think so, because it will be hard to properly characterize him, I think, his role

in this matter.

MS. BLOOM: I don't think we've established that anyone else understood the falsity of those statements to a level where we're going to argue it.

THE COURT: Okay. So then for purposes of the guidelines, unless there's some argument from the defendant, because dealing with grouping, it's only in the grouping that has to do with the false statements, isn't it?

MS. BLOOM: Your Honor, I think we have one count of securities fraud here, which we had two theories on which the jury could convict on securities fraud. So as to the manipulative trading, I think it was also clear that Mr. Reynolds was directing Mr. Herod and Mr. Stromsland, and therefore, gets organizer and leader as to both of the obstruction and the securities fraud.

THE COURT: Okay. I understand the theory.

Why doesn't that work?

MR. AXELROD: Your Honor, listen, all three men were engaged in the criminal conduct, but I don't think that the evidence establishes that Mr. Reynolds was directing or supervising or superintending their activity.

THE COURT: Why doesn't it? I mean, I understand because you don't want it to, but why doesn't it? You know, here the finding, actually, it is informed by the inducement to engage in false statements before the SEC. That tells us

a little bit about the way the relationships worked, and we've got both of them engaging in manipulative trading.

MR. AXELROD: But they're certainly friends. There's no doubt about that. There's a friendship relationship. But I don't think you can say just because they -- if you listen to the -- if you take the evidence as to the -- as the cooperators gave it, that there was a wink, wink, nudge, nudge, Mr. Reynolds said, "Here, why don't you say this?" I don't think you can take that fact and say because they were friends of his and he said, "Hey, it would be a good idea to say X to the SEC," then you can suddenly say that -- imply that he was a supervisor.

THE COURT: Well, certainly you can for Mr. Stromsland, can't you?

MR. AXELROD: No.

THE COURT: Okay. Then I'm going to look more carefully at this. I'm raising it. It seems fairly obvious to me, but I will go back and look at the evidence about it.

MR. AXELROD: I thought long and hard about this. You can certainly say that Mr. Reynolds was Mr. Stromsland's supervisor at PixarBio. And had Mr. Stromsland been charged in the false securities -- false statements securities fraud aspect and Mr. Reynolds had directed him to go out to investors and make false statements, I would agree with you. But Mr. Stromsland's manipulative trading was wholly apart

from his job at PixarBio.

THE COURT: But it was at the direction of Mr. Reynolds, and what we're talking about is not the corporate niceties at PixarBio. We're talking about the criminal enterprise.

MR. AXELROD: Well, I'm not sure that it was at the direction. Again, it was they were good friends, and Mr. Reynolds -- remember, Mr. Stromsland testified, Mr. Reynolds had a way of talking to you. He would say something like, "Oh, it would be a good idea to do this," and then Mr. Stromsland would do it. I don't think that there was testimony where Mr. Stromsland said, "Mr. Reynolds, as my supervisor at PixarBio, directed me to engage in manipulative trading."

THE COURT: No, we wouldn't be having this conversation if there was. But there is, let's call it, "Reynolds talk," in which the vein of his communications is enough to indicate, you know, what's the right thing to do, while coupled with -- but that would be wrong, that's for sure.

MR. AXELROD: And that is certainly what Mr. Stromsland testified to. But I think that this goes back to what the First Circuit said in *United States vs. Ramos Paulino*, Mr. Reynolds was certainly, from the evidence at trial, the jury could have found that he was directing the

criminal -- actually, I'm not going to concede that. That you're taking the jury's verdict that it showed that there was a criminal activity here that Mr. Reynolds was in charge of.

THE COURT: Right. And the question now is enterprise. I'm not -- do I say that his -- the woman who assisted as kind of secretary, special assistant -- I'm trying to remember her name.

MR. AXELROD: Ms. Holzhaus.

THE COURT: Ms. Holzhaus. Does she fall in that category here? Does she know all of what was going on? I'm not sure I would find that for her. I really am focused on the Stromsland/Herod dimension of this.

MR. AXELROD: I just want to say this, before I forget. I was clumsy in what I was saying before, and I didn't mean in any way to concede that --

THE COURT: I didn't understand that as a concession. That was not an ah-ha moment.

MR. AXELROD: I'm saying it more so for someone who would look at the transcript of this.

THE COURT: It's an easy way, shorthand way of capturing the issues that we are dealing with here.

MR. AXELROD: I just -- I don't think that the, "Hey, that would be cool if you did this for me, man. You're my buddy," which I think Mr. Stromsland didn't even testify

that those conversations went to that level, I don't think that that meets what this enhancement is trying to capture. Supervision and superintending to me is a much more distinct way of saying you're controlling what someone is doing, and I don't think the evidence at trial supported the conclusion that Mr. Reynolds was controlling Stromsland and Herod, even if you conclude that they were acting based on his wink, wink, nudge, nudge.

THE COURT: All right. So exercising control over, organized, or otherwise, was responsible for superintending is probably the operative language. Although I suppose complicit has some role in it.

I think it would be helpful for me if the Government, in support of its position, point me to particular parts of the record to do that.

MS. BLOOM: Yes, Your Honor. And I think that --

THE COURT: And if there's anything beyond the sentencing memorandum that you have now.

MS. BLOOM: So I'm sure we can find more examples. I think that we cited some of the testimony from Mr. Stromsland, where he very specifically explained how difficult -- I think both defendants explained how difficult it was to say no to Mr. Reynolds and that they did this only because they believed it was what he wanted and was directing them to do, albeit in Reynolds speak.

And I also would point out that Mr. Reynolds rewarded Mr. Stromsland by giving him a bonus for the activity, which also is a form of supervision.

THE COURT: I think I understand all of that. I don't mean to be saying, "Do you have anything else," but I'm keeping these open. If there's something additional that either party wants to adduce on this issue, I think it's clear which way the wind is blowing, but the winds change. And that really is ten or more persons as victims, and it is that at least Stromsland and probably Herod were involved in the market manipulation in some fashion. But I'm not going to make that determination until I've afforded an opportunity, since I've afforded the opportunity on other stuff, for you to address that.

But I think that deals with all of the questions that are open for purposes of the guidelines. Before I make the calculation with respect to the guidelines, I want to be sure and close those -- close those loops on it.

And then we will take up the larger questions of departure, because both of the parties are asking for departure here. Depending on where the guidelines are, both parties are asking for departure, below the guideline, because as the Government, in any way, calculates it, it's not quite a telephone number, but it's generated a very high level that seems to illustrate the limitations of the

guidelines in the fraud area. Okay?

Are there other things that you want to take up at this point, knowing that you've got to come back? But it's going to be the last time you come back -- well, you can come back whenever you want, but the last time to resolve these issues.

MR. AXELROD: Your Honor, given that we're coming back, the natural sequence of a sentencing hearing, it would be our position that I think it makes sense to take up everything at the -- when we resume.

THE COURT: Well, oh, yeah. I'm going to -- well, let me tell you what I think I'm going to do, which is that I'm going to resolve those sentencing guideline issues, say, "Here's what the guidelines are," and I'll hear both of you on where the sentence should be, in or outside of the guidelines. That's how I'll do it and then taking up the various departure or variance kinds of arguments that are made outside the guidelines.

MR. AXELROD: Right. I was just -- I was clumsily saying that I think allocution and all those arguments should obviously wait until next week.

THE COURT: Oh, yes. Oh, no. I'm not asking for anything like that. The foundational thing is get the guideline calculations straight.

MR. AXELROD: Right. Okay.

MS. BLOOM: In the interest of efficiency, one of the issues that's going to come up is restitution.

THE COURT: Uh-huh.

MS. BLOOM: Mr. Axelrod had raised in his materials that he thought that we had included some people from the PixarBio spreadsheet that were either incorrect or shouldn't be in there. I invited counsel to provide me any corrections or adjustments, and we have had some victims put in numbers that were higher than what we had. Not huge differences from the original, but some victims were higher, some victims were not on the list. Some victims may be a little lower. It doesn't -- I don't think it changes our range in any way.

THE COURT: But restitution is.

MS. BLOOM: But adjustments.

THE COURT: And I urge you to have precise adjustments, because I'm not going to award restitution except on an individual basis to individuals. So if somebody is asking for more than they're entitled to, of course I'm not going to do that. I'll try to figure out what they're entitled to. But I hope we can narrow that down a little bit.

MR. AXELROD: Your Honor, it's not going to surprise you that our objection to restitution was the same objection to the calculation of actual loss.

THE COURT: Correct.

MR. AXELROD: And there's provisions about calculating restitution, if it's too difficult or too time consuming, you punt. And I would just suggest that --

THE COURT: Well -- well, maybe punt, but it's punt at the end of the third quarter, because you've got to come back to finish the entire game at some point. It means that I cannot put it in the initial judgment, but sooner or later, I have to do it.

MR. AXELROD: And one thing that I would propose is that, in this instance, there's going to be a second game, using your analogy, before Judge Young.

THE COURT: Uh-huh.

MR. AXELROD: And so that, perhaps, in a different venue, where there's going to be -- where the SEC is going to, I believe, explore all of those issues that that -- the SEC is certainly going to seek disgorgement from Mr. Reynolds. And I know that's not a perfect substitute for restitution, but rather than going through a time consuming process --

THE COURT: But do I have the authority to not just punt, but duck?

MR. AXELROD: Under 18, USC, 3663, big (A), you do, if you conclude that -- I have the language somewhere here -- that restitution would be too difficult or time consuming in this process.

THE COURT: Okay. So it's been raised. You may or may not want to address that issue as a way of dealing with that; that is, restitution as being just another way of spelling disgorgement.

MS. BLOOM: I think that we have an obligation, if it can reasonably be determined, to determine it. And I believe it reasonably can be determined. And I guess what I'm proposing is that in this interim time period, Mr. Axelrod and Ms. Treanor have our list; they provide us anything they believe is incorrect. We will have an opportunity to respond to that and revise the list and look through the documents or check with the victims, if there are -- I don't think that they're arguing that most of the list is incorrect. I think they're saying there might be some specific items. Whether in whole --

Putting aside their objections to the concept of loss and the concept of restitution, none of us want the numbers to be incorrect. So if Mr. Reynolds, being knowledgeable at PixarBio, knows that there is something on that list that is incorrect, I would request that they be given a time period to give us that information and we will -- otherwise, I think what we have is a reasonable basis on which to order restitution, which is PixarBio's own list of who put money in when.

THE COURT: Well, let me just pause with that. A

suggestion has been made that that list is not necessarily what it purports to be or what you purport it to be. I think that's the thrust of an argument that's made.

And I may need to understand what it is, Mr. Axelrod, this list.

MR. AXELROD: Well, Your Honor, I don't know. The Government is seeking to use that list as the basis for actual loss.

THE COURT: Right.

MR. AXELROD: We object to the whole -- the whole formulation of how they're --

THE COURT: Okay. Let me put it a different way. This sounds like an elaborate incentive structure, but if the Government can show me that this comes from the -- from PixarBio and it appears that it is a list of shareholders with sufficient information to identify that their victims -- I'm going to use it. And so if there's -- now, maybe they can't do that for me. I haven't really gotten to that. They're put on notice that they've got to do that. But you're also put on notice that I will be using it, if it's admissible. And if there's something in there that's wrong, then -- presumably it favors you, too, but you're going to tell me about it or be left -- be stuck with that determination.

MR. AXELROD: And we've already noted many

instances of -- there's significant reasons to doubt the accuracy of that list. It includes open market purchases; it includes post-SEC freeze purchases; it includes wrong dates. I think it's our position generally, at this point, that it's unreliable as a whole.

THE COURT: Okay. So the Government will have to support it. I mean, I see it. You know, you look at it and say, "Ah-Ha, this is the list." On the other hand, sometimes things that are created as business records are not accurate, and so I'll look at it from that perspective. I mean, if there are things on there of -- that are pretty clear, like open market purchases, which we've all pushed off to the side, I think, properly, then you ought to scrub the list.

MS. BLOOM: I understand that, Your Honor, and --

THE COURT: I'm creating an incentive structure for both sides. But the defendant, just because you say you've got to tell us, and if you don't tell us, then it's -- we get the benefit of that, no. You're going to have to show independently that the list is reliable, and I should rely on it.

MS. BLOOM: And that's what I wanted to inquire about, because these lists, I believe, were kept by Ms. Holzhaus or Mr. Stromsland at different times, and are we talking about needing an affidavit or testimony from one of these witnesses? They certainly were produced as the list of

investors. Many of them line up with, I believe, the names that are in the --

THE COURT: How did you get them? Did you get them as grand jury submissions?

MS. BLOOM: I believe we received a copy of the productions that were made to the SEC, and they were contained in the SEC -- the production to the SEC.

THE COURT: And they were provided by the successors to Mr. Reynolds at PixarBio?

MS. BLOOM: No, by PixarBio, under Mr. Reynolds' control.

THE COURT: Okay. So maybe you show it by showing the document request and treat it as an admission by them. And I see where I go from there, which may put the burden back on the defendant.

MR. AXELROD: And the difficulty, Your Honor -- I'm really not trying to be difficult or play games, but in the SEC production that PixarBio made to the SEC, in 2017 into '18, I think, there are different versions of that list.

MS. BLOOM: (Nods head.)

MR. AXELROD: And just saying that PixarBio produced it to the SEC I don't think gets us to the finish line.

THE COURT: It may not, but I'll look at it from that perspective. If there's a request for accurate list or

lists that they maintained as business records regarding their shareholder, it's presumptive. And if you show that there -- "Here's another list. Why does it say that the purchases were on this date," that kind of thing, I'll look at it. That may extend the question of restitution. I think that I probably have to -- not probably, I must take a shot at figuring out what restitution is, rather than leaving it to the SEC case; although that has an allure to me, but I'm going to resist the allure, I think.

Okay. So I think you have your marching orders. I hate to say that things have to be submitted by noon on Monday, but I will say that things have to be submitted by noon on Monday if you want me to fully digest it.

MS. BLOOM: Your Honor, I also want to raise the issue, Ms. Wright cannot be here at 10 o'clock on Tuesday.

THE COURT: Okay. What's the timing?

MS. BLOOM: I believe that later would be okay.

THE COURT: I have a fairly sensitive 2:30 hearing.

MS. BLOOM: 11:30.

MS. WRIGHT: 11:30?

MS. BLOOM: 11:30 would be fine.

THE COURT: We'll go at 11:30 and disappoint or deferred gratification for the people who are involved in seeking a resolution in the 2:30 hearing. We'll just push it back a little bit.

MS. WRIGHT: Thank you, Your Honor.

MS. BLOOM: Thank you, Your Honor.

THE COURT: I don't think it's going to take us a lot of time, or if it does take a lot of time, it's going to be restitution lot of time for this. But I think I'm in a position to say, well, actual loss or the formulation of intended loss that you offered. Does it? And if I don't, then I've got to look back.

Now, one further thing, there is a money judgment forfeiture motion. Here it's $300,000. How do we get to $300,000? Remind me, as to Mr. Stromsland -- I mean, as to Mr. Reynolds.

MS. BLOOM: So that is, I would say, a fair -- we took a conservative view. That's the $300,000 that Mr. Herod transferred to Mr. Reynolds from the trading. So the rest of the money went into PixarBio, the $500,000. So for forfeiture, we look at the gain to the individual, and here we set off the 300,000 was clear and limited it to that.

THE COURT: Okay.

MR. AXELROD: Your Honor, we oppose it. I don't think that the trial testimony established that the $300,000 went to Mr. Reynolds. I think Mr. Herod's testimony was that he dropped the check off for Mr. Reynolds' wife. That's the first problem. The second problem was that we believed that the evidence showed that Mr. Reynolds and -- that Mrs.

Reynolds and Mr. Herod engaged into a contract, where Mr. Reynolds was going to get ten percent of the future earnings of a lawsuit, and so the $300,000 isn't necessarily easily prescribed as the Mr. Reynolds value he received from the trading.

THE COURT: Well, I'll resolve it.

Anything else that you want to submit on that, I'll look at, pointing to the Government on that. That's quite elaborate defense there and perhaps not one I'm going to find compelling. But it's raised, so I'll try to resolve every defense that's raised.

MR. AXELROD: Thank you, Your Honor.

THE COURT: Here something more that the Government thinks it wants to provide, I'll look at that, as well.

MS. BLOOM: Thank you, Your Honor.

THE COURT: But that focuses me on the testimony.

MR. AXELROD: Thank you.

THE COURT: Okay. Then if there's nothing else, we'll be in recess until 11:30 on Tuesday.

THE DEPUTY CLERK: All rise.

(Court in recess at 4:29 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Rachel M. Lopez, Certified Realtime Reporter, in and for the United States District Court for the District of Massachusetts, do hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing pages are a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 10th day of September, 2020.

/s/ RACHEL M. LOPEZ

_____
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Official Court Reporter